THE ADMISSIBILITY IN EVIDENCE OF THE DEFENDANT'S FINANCIAL CIRCUMSTANCES IN ACTIONS FOR LIBEL OR SLANDER.—The measure of damages in actions for libel or slander has been a source of considerable conflict in our law. The rule permitting exemplary as well as compensatory damages in these cases has been attacked, though apparently with little success, by Mr. Greenleaf and others.[1] Now it seems that the rule permitting evidence of the pecuniary circumstances of the defendant to be introduced in libel or slander suits for the purpose of enhancing or mitigating the damages, is under fire. In fact the tendency of some courts is to repudiate it entirely.

This tendency is shown by a recent decision of the Supreme Court of Iowa.[2] The action was for slander. The lower court permitted the plaintiff to introduce evidence of the reputed wealth of the defendant. Upon appeal the defendant contended that if proof of wealth is admissible at all, it should be limited to actual and not reputed wealth. The court refused to admit evidence of either the reputed or actual wealth of the defendant, and repudiated the rule, which, it stated, had long been recognized in that state.[3] The ground for the decision was that "if the plaintiff is permitted to establish the reputed wealth of the defendant, the latter has the right to meet such evidence by proving his reputed wealth to be otherwise than as claimed by the plaintiff, and the jury would be led into a collateral matter wholly foreign to the issue in the case and, as we view it, not germane to its proper determination." This conclusion is supported by a few scattered cases.[4]

According to the great weight of authority,[5] however, the plaintiff in such an action is entitled to show the financial condition of the defendant. An analysis of the situation will show that this view is founded on both logic and expediency. First, insofar as compensatory damages are concerned, the evidence ought to be admitted. The extent of injury suffered by the plaintiff, hence the amount of compensatory damages to be awarded, will unquestionably be largely dependent upon the rank and influence of the defendant

[1] Sedgwick on Damages, Sec. 353-354.

[2] Sclar v. Resnick, 185 N. W. 273 (Iowa 1921).

[3] Hahn v. Lumpa, 158 Iowa 560, 138 N. W. 492 (1913); Herzman v. Oberfelder, 54 Iowa 83, 6 N. W. 81 (1880); Karney v. Paisley, 13 Iowa 89 (1862).

[4] King v. Sassaman, 64 S. W. 937 (Tex. 1901); Nailor v. Pouder, 1 Marv. (Del.) 408, 41 Atl. 88 (1895); Enos v. Enos, 58 Hun 45, 11 N. Y. S. 415 (1890).

[5] Downs v. Cassidy, 47 Mont. 471, 133 Pac. 106 (1913); Slaughter v. Johnson, 181 Ill. App. 693 (1913); Kidder v. Bacon, 74 Vt. 263, 52 Atl. 322 (1902); Steen v. Friend, 11 Ohio Cir. Dec. 235, 20 Ohio Cir. Ct. 459 (1901); McAlmont v. McClelland, 14 Serg. & R. 259 (Pa. 1828); Note Ann. Cas. 1915 B, 1159.

in the community in which he lives. If he occupies a high and influential position, his words will have a much more serious effect than if he were of little importance in the community. In theory a man's prestige and reputation for veracity ought not to depend upon the reputed or actual size of his pocketbook; nevertheless every thinking man must realize that in a modern American world wealth is in fact a powerful factor in bringing rank and influence. While influence is by no means necessarily dependent upon the possession of wealth, yet it would seem that, in general, there is a direct relation between them, and that a man's financial standing is one element to be considered in ascertaining his social position.[6] Inasmuch as position or prestige is a matter of reputation, it would seem proper in determining it to consider a man's reputed wealth rather than his actual wealth.[7] We may conclude, therefore, that in suits for libel or slander the reputed financial standing of the defendant [8] is relevant as tending to show his influence, and consequently the extent of injury and amount of compensatory damages due to the plaintiff.

When it appears that the defendant acted maliciously in publishing the libel, or uttering the slander, practically all courts permit the jury to award exemplary or punitive damages.[9] Here evidence of the defendant's wealth seems not only relevant but an essential fact upon which to base the punitive award. A money verdict which would be extremely punitive to a defendant of small or moderate means might easily be light and trivial to a defendant of large financial resources. The vengeance of the law would scarcely be appreciated, and he could afford to pay and slander still. It is obvious that in this case the defendant's capacity to pay, and hence the extent of punishment, depends not on his reputed, but on his actual wealth. It would seem, therefore, that on the question of exemplary damages the pecuniary circumstances of the defendant at the time of the trial become material and relevant, and may be considered by the jury in determining the amount of their verdict.

Thus we see that the true rule must admit evidence of the defendant's reputed wealth in measuring compensatory damages, and

[6] This is peculiar neither to modern times nor to America. Plutarch in his Life of Nicias says that Lamachus was a brave and honest man, but so poor that when appointed general he used to account for his very clothes out of public funds. The author then adds "On the contrary, Nicias, as on other accounts, so, also, because of his wealth and station, was very much thought of."—Plutarch's Lives, Vol. III.

[7] McCloy v. Vaughan, 185 Mich. 189, 151 N. W. 667 (1915); Standwood v. Whitmore, 63 Me. 209 (1874).

[8] The better view is that the evidence should relate to the defendant's reputed wealth at the time of the publication of the libel or the utterance of the slander. Geringer v. Norak, 117 Ill. App. 160 (1904); Rea v. Harrington, 58 Vt. 181, 2 Atl. 475 (1886).

[9] Sedgwick on Damages, sec. 377.

evidence of the defendant's actual wealth in measuring exemplary damages.[10] Nor should the fact that the defendant is a corporation render evidence as to its wealth inadmissible.[11]

If this rule is supported both by authority and reason, why was it repudiated by the Iowa court in the instant case? The main reason is that if the evidence is admitted there is, the Court says, a danger of the jury being led into "the bewildering labyrinths of such collateral matter." But this danger might be removed by making it the duty of the trial court by proper cautions to guard against undue weight being given such evidence, and thus the benefits of the rule would be retained. Some courts apply the rule in this restricted manner.[12] Again the court in the principal case asks "Is the utterance of a man worth $50,000 to be regarded as twice as damaging as that of a man worth only $25,000? And if the slanderer is insolvent, does it follow that no damages flow from his utterances?" In answer to these questions it need only be said that the rule contended for would support no such arbitrary propositions. The utterances of a man carry great or little weight, not because he is rich or poor, but because he is a man of great or little influence; and one of a number of elements which indicate the extent of his influence is his wealth or poverty. Finally it is said that "the rule originated at a time when wealth was by no means as universally distributed as it is at the present time." Apparently the court means that with a more equal distribution of wealth existing today, wealth is no longer indicative of influence and standing. Would that the court's contention were true, but it is not, for people are rich or poor only by comparison; and relatively speaking, there is the same difference in wealth that there was when the rule originated. It seems certain that the glitter of gold has the same magnetic effect upon the popular mind today as it did in days gone by. If this is so then the reason for the rule is equally as cogent as heretofore, and the advantage to be gained from admitting the evidence seems to far outweigh the possible risk of shifting the field of battle to a collateral matter.

A. B. V. B.

WHEN REVIEW OF JUDGMENTS OF STATE COURTS MAY BE HAD IN THE UNITED STATES SUPREME COURT BY WRIT OF ERROR OR CERTIORARI.—When is it proper to bring an appeal to the United States Supreme Court by writ of error or *certiorari,* when it is desired to review the decision of a state court passing on the validity of a state statute alleged to be repugnant to the Constitu-

[10] Bahrey v. Poniatishin,' 112 Atl. 481 (N. J. 1921).

[11] Buckeye Cotton Co. v. Sloane, 250 Fed. 712 (Tenn. 1918); Cotton Lumber Co. v. La Crosse Lumber Co., 200 Mo. App. 7, 204 S. W. 957 (1918).

[12] Randall v. Evening News Assn., 97 Mich. 136, 56 N. W. 361 (1893).